

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 25

UNITED STATES PATENT AND TRADEMARK OFFICE

**MAILED**

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

JAN 14 2004

PAT. & T.M. OFFICE  
BOARD OF PATENT APPEALS  
AND INTERFERENCES

Ex parte CAROLYN JEAN CUPP,  
LYNN ANN GERHEART, SCOTT SCHNELL,  
SHERI LYNN SMITHEY and DONNA ELIZABETH ANDERSON

Appeal No. 2002-1011  
Application No. 09/154,646

HEARD: January 07, 2003

Before WALTZ, KRATZ and JEFFREY T. SMITH, Administrative Patent Judges.

KRATZ, Administrative Patent Judge.

ON REMAND TO THE EXAMINER

The above-identified application is again remanded to the examiner for appropriate action consistent with our comments below.

Subsequent to our Remand mailed January 30, 2003, the examiner submitted a supplemental examiner's answer (Paper No. 23) mailed on October 07, 2003. Thereafter, on December 05,

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2003, appellants filed a reply brief (Paper No. 24) in response to that supplemental examiner's answer.

There is currently no indication in the record that the examiner has reviewed that above-noted reply brief. Consequently, we return this application to the jurisdiction of the examiner for consideration of the reply brief. If the examiner decides to maintain the rejections set forth in the answer, the examiner can acknowledge receipt and entry of the reply brief (Paper No. 24) and return the application to the jurisdiction of the Board of Patent Appeals & Interferences, or the examiner may reopen prosecution to respond to that reply brief. See 37 CFR § 1.193 (b)(1) and Manual of Patent Examining Procedure § 1208.03 (8th ed., August 2001). In this regard, we do not authorize a supplemental answer under 37 CFR § 1.193(b)(1)(1999) as an option for the examiner to respond to the reply brief (Paper No. 24).

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This application, by virtue of its "special" status requires an immediate action. Manual of Patent Examining Procedure § 708.01 (8th ed., August 2001). It is important that the Board be informed promptly of any action affecting the appeal in this case.

REMANDED

Thomas A. Wall

THOMAS A. WALTZ  
Administrative Patent Judge

Peter F. Kuntz

PETER F. KRATZ  
Administrative Patent Judge

BOARD OF PATENT  
APPEALS  
AND  
INTERFERENCES

Almy & Moore

JEFFREY T. SMITH  
Administrative Patent Judge

PFK

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